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7 Attorneys for Defendants KV  
8 Pharmaceutical Company and ETHEX  
9 Corporation

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE STATE OF ARIZONA**

12 Michael VanSchaik, Individually and as  
13 Surviving Spouse and Representative of the  
14 Estate of Carolyn Moria Van Schaik;  
15 Patrick Patenge, son of Carolyn Moira;  
16 Andrew Patenge, son of Carolyn Moira,

17 Plaintiffs,

18 v.

19 Target Stores, Inc., a Minnesota  
20 corporation dba Target Pharmacy #1959;  
21 Ethex Corporation, a Missouri corporation;  
22 K-V Pharmaceutical Company, a Delaware  
23 corporation; Julie Cole, an Arizona  
24 resident; Tina Do-Tringh; John Does 1-5;  
25 Jane Does 1-5; Corporations A-Z,

26 Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**NOTICE OF REMOVAL**

By Defendants KV  
PHARMACEUTICAL COMPANY  
AND ETHEX CORPORATION

Maricopa County Superior Court Case  
No. CV2009-012125

19 In accordance with the provisions of 18 U.S.C. §1441 *et seq.*, KV Pharmaceutical  
20 Company and ETHEX Corporation hereby remove the above-captioned lawsuit from the  
21 Superior Court of Arizona, in and for the County of Maricopa, in which it is currently  
22 pending, to the United States District Court for the District of Arizona. As grounds for  
23 the removal of this case, KV Pharmaceutical Company and ETHEX Corporation state as  
24 follows:  
25  
26

1           1.       On April 15, 2009, an action was commenced in the Superior Court of the  
 2 State of Arizona, in and for the County of Maricopa, entitled Michael Vanschaik,  
 3 individually and as surviving spouse and representative of the estate of Carolyn Moria  
 4 Van Schaik; Patrick Patenge, son of Carolyn Moria; Andrew Patenge, son of Carolyn  
 5 Moir, Plaintiffs, v. Target Stores, Inc., a Minnesota corporation dba Target Pharmacy  
 6 #1959; Ethex Corporation, a Missouri corporation; K-V Pharmaceutical Company, a  
 7 Delaware corporation; Julie Cole, an Arizona resident; Tina Do-Tringh; John Does 1-5;  
 8 Jane Does 105; Corporations A-Z;, Defendants, as Case No. CV2009-012125. Pursuant  
 9 to 28 U.S.C. § 1446(b), a copy of the Complaint and Summons is attached as Exhibit  
 10 “A.”

13           2.       The Complaint and Summons were served on KV Pharmaceutical  
 14 Company<sup>1</sup> on April 27, 2009.

16           3.       ETHEX Corporation and KV Pharmaceutical Company have not filed any  
 17 pleadings or papers in the State Court Action, and the time during which ETHEX  
 18 Corporation and KV Pharmaceutical Company is required by 28 U.S.C. §1446(b) to file  
 19 this notice of removal has not yet expired.

21           4.       The action is a civil action that falls under this Court’s original jurisdiction  
 22 pursuant to 28 U.S.C. § 1332 (diversity citizenship) and is one which may be removed to  
 23 this Court by defendants pursuant to the provisions of 28 U.S.C. §§ 1441(b) and (c).

1           5.       Plaintiffs and all proper defendants are, and at all material times were,  
2 citizens of different states.

3           6.       The three named plaintiffs, Michael Vanschaik, Patrick Patenge, and  
4 Andrew Patenge, are alleged to be Arizona residents (Complaint, pages 1-2).

5           7.       Defendant Target Stores is alleged to be a Minnesota corporation  
6 (Complaint, page 2).

7           8.       Defendant ETHEX Corporation is a foreign corporation, incorporated in the  
8 State of Missouri, with its principal office and residence in Missouri.

9           9.       Defendant KV Pharmaceutical Company is a foreign corporation,  
10 incorporated in the State of Delaware, with its principal office and residence in Missouri.

11           10.      The residence of all other defendants is irrelevant to diversity jurisdiction  
12 for reasons noted below. Consequently, this Court has original jurisdiction pursuant to  
13 28 U.S.C. § 1332.

14           11.      It is well established that “fraudulently joined defendants will not defeat  
15 removal on diversity grounds.” *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9<sup>th</sup>  
16 Cir. 1998) [citing *Emrich v. Touche Ross and Co.*, 846 F.2d 1190, 1193 & n.1 (9<sup>th</sup> Cir.  
17 1988), and *McCabe v. General Foods Corp.*, 811 F.2d 1336 (9<sup>th</sup> Cir. 1987)]. “If the  
18 plaintiff fails to state a cause of action against a resident defendant, and the failure is  
19 obvious according to the settled rules of the state, the joinder of the resident defendant is  
20  
21  
22  
23  
24

---

25           <sup>1</sup> KV Pharmaceutical Company has been misnamed in Plaintiffs’ Complaint as  
26

1 fraudulent.” *McCabe*, 811 F.2d at 1339. Additionally, “[t]he defendant seeking removal  
 2 to the federal court is entitled to present the facts showing the joinder to be fraudulent.”  
 3 *Id.*, at 1339, *see also*, *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92 (1921).  
 4

5 12. Defendants Julie Cole and Tina Do-Tringh are “provider” defendants and  
 6 are alleged to be residents of Arizona (Complaint, page 2). Assuming defendant Cole  
 7 and Do-Tringh are Arizona residents, they have been fraudulently joined because  
 8 plaintiffs have failed to state a cause of action against them and that failure is clear under  
 9 applicable law.  
 10

11 13. The gravamen of the Complaint is that the defendants manufactured,  
 12 labeled and sold an unidentified medication to Carolyn Moira Van Schaik causing her  
 13 death (Complaint, pages 2-3).  
 14

15 14. Count I of plaintiffs’ Complaint is for strict products liability. Count I is  
 16 pled as to all defendants except “provider” defendants Cole and Do-Tringh (Complaint,  
 17 page 3).  
 18

19 15. Count II of plaintiffs’ Complaint is for negligence. Count II is pled against  
 20 all named defendants including the “provider” defendants Cole and Do-Tringh  
 21 (Complaint, page 4). Plaintiffs allege that the defendants “had a duty to Plaintiffs to  
 22 exercise *reasonable and ordinary care* in the design, formulation, testing, manufacture,  
 23 inspection, sale and dispensing of the medicine, and in issuing proper warnings and  
 24 instructions including timely and effective recalls” (emphasis added).  
 25  
 26

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“K-V Pharmaceutical Company”

(Page 4)

1           16.     In Arizona, a medical malpractice action or cause of action for medical  
 2 malpractice means “an action for injury or death against a licensed health care provider  
 3 based upon such provider’s alleged negligence, misconduct, errors or omissions, or  
 4 breach of contract in the rendering of health care, medical services, nursing services or  
 5 other health-related services or for the rendering of such health care, medical services,  
 6 nursing services or other health-related services. without express or implied consent  
 7 including an action based upon the alleged negligence, misconduct, errors or omissions or  
 8 breach of contract in collecting, processing or distributing whole human blood, blood  
 9 components, plasma, blood fractions or blood derivatives.” A.R.S. § 12-561.  
 10

11           17.     The necessary elements of proof that injury resulted from a health care  
 12 provider to follow the accepted standard of care are:  
 13

- 14                   1.     The health care provider failed to exercise that degree of care,  
 15 skill and learning expected of a reasonable, prudent health  
 16 care provider in the profession or class to which he belongs  
 17 within the state acting in the same or similar circumstances.
- 18                   2.     Such failure was a proximate cause of the injury.  
 A.R.S. § 12-563.

19           18.     The Arizona citizenship of the “provider” defendants Cole and Do-Tringh  
 20 should be disregarded for purposes of determining whether this Court has diversity  
 21 jurisdiction on the ground that plaintiffs have failed to plead the negligence of the  
 22 “provider” defendants as required under A.R.S. § 12-563.  
 23

24           19.     The “provider” defendants are believed to be pharmacists who dispensed  
 25 the unidentified medication to the decedent. Arizona courts have held that pharmacists  
 26 are professionals in the health care area and are subject to a higher standard of care.

1 *Lasley v. Shrake's Country Club Pharmacy*, 179 Ariz. 583, 586-87, 880 P.2d 1129,  
2 1132-33 (Ariz. Ct. App. 1994).

3  
4 20. Plaintiffs have failed to plead the medical negligence standard required of  
5 pharmacists in the State of Arizona. Consequently, plaintiffs' failure to state a cause of  
6 action against the "provider" defendants makes the joinder of those defendants  
7 fraudulent. *See McCabe*, 811 F.2d at 1339.

8  
9 21. Plaintiffs have also failed to comply with A.R.S. § 12-2603(A) which  
10 require plaintiffs to certify in writing at the time of filing their Complaint whether or not  
11 expert opinion testimony is necessary to prove the health care provider's standard of care  
12 or liability for the claim.

13  
14 22. Count III of plaintiffs' Complaint is for conscious misrepresentation/  
15 concealment involving risk of physical harm under Restatement (2<sup>nd</sup>) of Torts §310.  
16 Count III is not pled against the "provider" defendants Cole and Do-Tringh (Complaint,  
17 page 5).

18  
19 23. Count IV of plaintiffs' Complaint is for negligent misrepresentation/  
20 concealment involving risk of physical harm under Restatement (2<sup>nd</sup>) of Torts §311.  
21 Count IV is pled against all defendants including the "provider" defendants Cole and Do-  
22 Tringh (Complaint, page 6). This is not a valid claim against the "provider" defendants  
23 because it is in the nature of the types of claims that should be brought under A.R.S. §  
24 12-563.  
25  
26

1           24.     Count V of plaintiffs' Complaint is for consumer fraud. Count V is pled as  
2 to all defendants except the "provider" defendants Cole and Do-Tringh (Complaint, page  
3 7).

4           25.     Count VI of plaintiffs' Complaint is for implied warranty. Count VI is not  
5 pled against the "provider" defendants Cole and Do-Tringh (Complaint, page 8).

6           26.     Count VII of plaintiffs' Complaint for negligent supervision and training.  
7 Count VII is not pled against the "provider" defendants Cole and Do-Tringh (Complaint,  
8 page 9).

9           27.     The citizenship of any fictitious defendants named in plaintiffs' Complaint  
10 must also be disregarded for purposes of determining removal jurisdiction. 28 U.S.C. §  
11 1441(a) provides as follows:

12                   Except as otherwise expressly provided by Act of Congress, any civil  
13 action brought in a State court of which the district courts of the United  
14 States have original jurisdiction, may be removed by the defendant or the  
15 defendants, to the district court of the United States for the district and  
16 division embracing the place where such action is pending. ***For purposes***  
17 ***of removal under this chapter, the citizenship of defendants sued under***  
18 ***fictitious names shall be disregarded.*** (emphasis added).

19           28.     The amount in controversy herein clearly exceeds \$75,000 given the nature  
20 of the allegations of injury, which include allegations for the wrongful death of Carolyn  
21 Van Schaik (Complaint, page 3). Plaintiffs are claiming as damages general damages;  
22 special damages; loss of past earnings, loss of future income, and diminished earning  
23 capacity; damages for a substantial decrease in the quality of life and a loss of the ability  
24 to engage in the pursuit of various pleasurable activities; the value of past and future  
25  
26

1 gratuitous services; the loss of consortium, love, affection, care, comfort, companionship  
2 and society; and punitive damages (Complaint, pages 9-10).

3 29. Venue of this removal action is proper pursuant to 28 U.S.C. § 1442(a)  
4 because this Court is the United States District Court for the district and division  
5 embracing the place where the state court action was pending.  
6

7 30. Defendants Target Stores, Inc. dba Target Pharmacy #1959, Julie Cole and  
8 Tina Do-Tringh consent to this Notice of Removal. Their consent is evidenced by their  
9 respective consents to Notice of Removal which are attached collectively as Exhibit "B."  
10

11 31. WHEREFORE, defendants KV Pharmaceutical Company and ETHEX  
12 Corporation hereby remove to this Court Maricopa County Superior Court Case No.  
13 CV2009-012125.  
14

15 32. A copy of this notice has been filed with the State Court Clerk per Rule  
16 2.23.

17 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of May, 2009.

18 RENAUD COOK DRURY MESAROS, PA  
19

20  
21 By 

22 Margaret T. McCarthy  
23 One North Central Suite 900  
24 Phoenix, Arizona 85004-4417  
25 Attorneys for Defendants KV  
26 Pharmaceutical Company and ETHEX  
Corporation



**CERTIFICATE OF SERVICE**

I hereby certify that on this 27 day of May, 2009, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

Copy also mailed this same date to:

Mark R. Gilling, Esq.  
SANDERS & PARKS, P.C.  
3030 N. 3rd Street, Suite 1300  
Phoenix, Arizona 85012

By 

## **EXHIBIT “A”**

## **INDEX TO EXHIBIT "A"**

- 1. Maricopa County Superior Court Case No.: CV2009-012125 Docket**
- 2. Demand for Jury Trial**
- 3. Certificate of Compulsory Arbitration**
- 4. Complaint**
- 5. Summons (Target Stores, Inc.)**
- 6. Summons (KV Pharmaceutical)**
- 7. Summons (ETHEX Corporation)**
- 8. Summons (Julie Cole)**
- 9. Summons (Tina Do-Tringh)**
- 10. Affidavit of Service (Target Stores, Inc.)**
- 11. Service of Process Transmittal (KV Pharmaceutical)**
- 12. Service of Process Transmittal (ETHEX Corporation)**
- 13. Affidavit of Service (Julie Cole)**
- 14. Affidavit of Service (Tina Do-Tringh)**

## The Judicial Branch of Arizona, Maricopa County

### Docket > Civil Court Cases

#### Civil Court Case Information - Case History

#### Case Information

Case CV2009-012125 Judge: Heilman, Joseph

Number:

File Date: 4/15/2009 Location: Downtown

Case Civil

Type:

#### Party Information

Party Name	Relationship	Sex	Attorney
Michael Vanschaik	Plaintiff	Male	MARK GILLING
Patrick Patenge	Plaintiff	Male	MARK GILLING
Andrew Patenge	Plaintiff	Male	MARK GILLING
Target Stores Inc	Defendant		Pro Per
Ethex Corporation	Defendant		Pro Per
K-V Pharmaceutical Company	Defendant		Pro Per
Julie Cole	Defendant	Female	Pro Per
Tina Do-Tringh	Defendant	Female	Pro Per

#### Case Documents

Filing Date	Description	Docket Date	Filing Party
4/30/2009	AFS - Affidavit Of Service	5/7/2009	
NOTE: JULIE COLE SERVED 4/23/09			
4/30/2009	AFS - Affidavit Of Service	5/7/2009	
NOTE: TINA DO-TRINGH SERVED 4/24/09			
4/30/2009	SUM - Summons	5/4/2009	
4/30/2009	SUM - Summons	5/4/2009	
4/30/2009	AFM - Affidavit of Service Registered/Certified Mail	5/8/2009	
NOTE: ETHEX CORPORATION SERVED 04/27/09			
4/30/2009	AFM - Affidavit of Service Registered/Certified Mail	5/8/2009	
NOTE: K-V PHARMACEUTICAL CO SERVED 04/29/09			
4/27/2009	AFS - Affidavit Of Service	4/29/2009	

**NOTE: TARGET STORES INC SERVED 04/23/09**

4/27/2009	SUM - Summons	4/30/2009
4/15/2009	COM - Complaint	4/17/2009
4/15/2009	CCN - Cert Arbitration - Not Subject	4/17/2009
4/15/2009	NJT - Not Demand For Jury Trials	4/17/2009

### **Case Calendar**

**There are no calendar events on file**

### **Judgments**

**There are no judgments on file**

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

MICHAEL VANSCHAIK, Individually and as  
Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

Plaintiffs,

v.

TARGET STORES, INC., a Minnesota  
corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
CORPORATIONS A-Z;

Defendants,

Case No. **CV2009-012125**

**DEMAND FOR JURY TRIAL**

Plaintiffs, Michael Vanschaik, Patrick Patenge, and Andrew Patenge, through  
counsel undersigned, hereby demands a trial by jury in the above-captioned matter, of  
all issues so triable all in accordance with the Rules of Civil Procedure.

**COPY**

**APR 15 2009**



MICHAEL K. VANSCHAIK  
J. GARCIA  
DISTRICT CLERK

1 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2009.

2 SANDERS & PARKS, P.C.

3 By \_\_\_\_\_

4 Mark R. Gilling  
3030 North Third Street, Suite 1300  
Phoenix, Arizona 85012-3099

5 AND

6 John C. Giles  
Law Office of John C Giles, PC  
238 West Second Street  
7 Mesa, Arizona 85201

8 *Attorneys for Plaintiffs*

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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9 MICHAEL VANSCHAIK, Individually and as  
 10 Surviving Spouse and Representative of the  
 Estate of Carolyn Moira Van Schaik; PATRICK  
 11 PATENGE, son of Carolyn Moira; ANDREW  
 PATENGE, son of Carolyn Moira,

12 Plaintiffs,

13 v.

14 TARGET STORES, INC., a Minnesota  
 15 corporation dba TARGET PHARMACY  
 #1959; ETHEX CORPORATION, a Missouri  
 16 corporation; K-V PHARMACEUTICAL  
 COMPANY, a Delaware corporation; JULIE  
 17 COLE, an Arizona resident; TINA DO-  
 TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
 18 CORPORATIONS A-Z;

19 Defendants,

Case No.: **CV2009-012125**

**CERTIFICATE OF  
 COMPULSORY ARBITRATION**

20 Plaintiffs, Michael Vanschaik, Patrick Patenge, and Andrew Patenge, through  
 21 counsel undersigned, certify that this matter exceeds the jurisdictional requirement and is  
 22 not subject to compulsory arbitration.

SANDERS & PARKS, P.C.  
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 PHOENIX, ARIZONA 85012  
 (602) 523-5600



**COPY**

**APR 15 2009**

MICHAEL E. JONES, CLERK  
 J. MARCIA  
 DEPUTY CLERK



1 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2009.

2 SANDERS & PARKS, P.C.

3 By

4 Mark R. Gilling

5 3030 North Third Street, Suite 1300

6 Phoenix, Arizona 85012-3099

7 AND

8 John C. Giles

9 Law Office of John C Giles, PC

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11 Mesa, Arizona 85201

12 *Attorneys for Plaintiffs*

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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

MICHAEL VANSCHAIK, Individually and as  
Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
PATENGE, son of Carolyn Moira; ANDREW  
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v.

TARGET STORES, INC., a Minnesota  
corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
CORPORATIONS A-Z;

Defendants,

Case No.:

**CV2009-012125**

**COMPLAINT**

**(Wrongful death, Strict Products  
Liability, Negligence, Restatement  
(Second) of Torts Section 310,  
Restatement (Second) of Torts  
Section 311, Consumer Fraud,  
Implied Warranty and Negligent  
Supervision/Training)**

Plaintiffs, by and through counsel undersigned, and for their COMPLAINT against  
Defendants, allege as follows:

**PARTIES AND VENUE**

1. Plaintiff Michael Van Schaik is an Arizona resident living in Maricopa  
County, Arizona.

2. Plaintiff Patrick Patenge is an Arizona resident living in Maricopa County.

**COPY**

APR 15 2009



MICHAEL K. JAMES, CLERK  
J. GARCIA  
DEPUTY CLERK

SANDERS & PARKS, P.C.  
3030 N. THIRD STREET, #1300  
PHOENIX, ARIZONA 85012  
(602) 523-5600

1           3.     Plaintiff Andrew Patenge is an Arizona resident living in Maricopa County.

2           4.     Defendant Target Stores, Inc. (hereinafter "Target"), is a Minnesota  
3     corporation doing business in Arizona as Target Pharmacy #1959 located at 5110 S.  
4     Power Road in Mesa, Arizona.

5           5.     Defendant K-V Pharmaceutical Company is a Delaware corporation doing  
6     business in Arizona.

7           6.     Defendant Ethex Corporation is a Missouri corporation doing business in  
8     Arizona.

9           7.     Defendants JULIE COLE and TINA DO-TRINGH are believed to be  
10    Arizona residents who worked for Target Stores, Inc. in Maricopa County and who, upon  
11    information and belief, reside in Maricopa County, Arizona. Their actions as alleged  
12    herein were done in the course and scope of their employment and/or agency with Target  
13    Stores, Inc., dba Target Pharmacy #1959 and/or their employers Corporations G-H.

14          8.     Defendants John Does 1-5, Jane Does 1-5 and Corporations A-Z are  
15    individuals or corporations who engaged in activity in Arizona out of which this  
16    Complaint arises.

17          9.     Defendants caused events to occur in Maricopa County, Arizona which are  
18    the subject of this Complaint and which satisfy the monetary jurisdiction of this Court,  
19    therefore, jurisdiction and venue are proper in this Court.

20                   **GENERAL ALLEGATIONS**

21          10.    Defendants Ethex Corporation, K-V Pharmaceutical Company and  
22    Corporations A-C manufactured, labeled and sold into the stream of commerce, including  
23    Arizona, certain medication by and through Defendant Target Stores, Inc. dba Target  
24    Pharmacy #1959 and/or Corporations D-F, John Does 1-3 and Jane Does 1-3 which in  
25    turn was dispensed to Carolyn Van Schaik. The medicine was dispensed and sold by  
26    Defendants Julie Cole and/or Tina Do-Tringh or under their supervision and direction.

27          11.    Carolyn Van Schaik took the medication according to the prescription and  
28    instructions provided by said foregoing Defendants.

SANDERS & PARKS, P.C.  
 3030 N. THIRD STREET, #1300  
 PHOENIX, ARIZONA 85012  
 (602) 523-5600

12. Unbeknownst to Carolyn Van Schaik and Plaintiffs, the medication was mislabeled and as a result of taking the mislabeled medicine Carolyn Van Schaik died leaving her surviving husband, Plaintiff Michael Van Schaik, and children, Plaintiffs Patrick Patenge and Andrew Patenge. Pursuant to Arizona's Wrongful Death statute, Plaintiffs assert the claims set forth herein for the wrongful death of Carolyn Van Schaik.

13. Subsequent to manufacturing, labeling and selling the medicine, and subsequent to Carolyn Van Schaik taking the medicine and dying from it, Defendants issued a recall notice notifying Carolyn Van Schaik that the medicine was being recalled due to the fact that Defendants knew it to have been mislabeled and oversized because it contained twice the dosage of drugs.

#### COUNT I

#### **(STRICT PRODUCTS LIABILITY – ALL DEFENDANTS EXCEPT JULIE COLE, TINA DO-TRINGH, JOHN DOES 1-3 and JANE DOES 1-3)**

14. Plaintiffs hereby incorporate by reference all prior and foregoing allegations in this Complaint as though fully set forth herein.

15. The medicine manufactured, labeled and sold by the above mentioned Defendants, and the warnings and instructions given by them, were defective and unreasonably dangerous in design and manufacture, and in warnings/instructions, for its intended and foreseeable use at the time it left the Defendants, and as a proximately result of said defects Carolyn Van Schaik died and Plaintiffs suffered damages.

16. Defendants are engaged in the business of manufacturing and/or selling tires, and manufactured, sold or otherwise placed into the stream of commerce the tire that failed in this accident.

17. Defendants are strictly liable to Plaintiffs in tort.

18. Plaintiffs were relying on the skill and judgment of Defendants to ensure that the medicine would be suitable for the purposes for which it was being used.

19. Defendants understand that using the recalled medicine as intended would result in injury or death.

21. Plaintiffs are accordingly entitled to punitive damages against Defendants.

**(NEGLIGENCE – ALL DEFENDANTS)**

28. As a direct and proximate result of the negligence of Defendants, Carolyn

1 Van Schaik died and Plaintiffs suffered damages.

2 29. Plaintiffs are informed and believe that Defendants knew or should have  
3 known about the negligence alleged in this Complaint and that life-threatening accidents  
4 such as that which occurred would result. Nonetheless, Defendants did not take  
5 measures to remedy its negligence, nor timely and effectively warn the public or  
6 consumers like Plaintiffs about its negligence and the risks that it posed. Defendants  
7 acted with a willful, wanton, reckless, and malicious behavior and/or a conscious  
8 disregard of the substantial risk that such conduct might threaten the life, or seriously  
9 injure the physical health, welfare, and safety of consumers like Plaintiffs.

10 30. Accordingly, Plaintiffs are entitled to punitive damages against Defendants.

### 11 COUNT III

#### 12 (RESTATEMENT (SECOND) OF TORTS SECTION 310 – CONSCIOUS 13 MISREPRESENTATION/CONCEALMENT INVOLVING RISK 14 OF PHYSICAL HARM – ALL DEFENDANTS EXCEPT 15 JULIE COLE AND TINA DO-TRINGH)

16 31. Plaintiffs hereby incorporate by reference all prior allegations in this  
17 Complaint as though fully set forth herein.

18 32. Defendants engaged in a course of advertising, marketing, instructing and  
19 promoting the medicine that contained express and implied misstatements of material  
20 fact concerning the character, quality and safety of this product including that it was safe  
21 to use as directed when in fact the medicine contained double the dosage of the drug and  
22 would be harmful or fatal if taken as directed.

33. Defendants Ethex and K-V Pharmaceutical further concealed their  
knowledge of the misstatements of material fact concerning the character, quality and  
safety of the medicine known to them to exist as a result of their knowing failure to  
follow good practice, custom and industry standard in the manufacture of the medicine.

34. Defendants' false statements/concealment were made to others, including  
but not limited to Julie Cole, Tina Do-Tringh, Target Stores, Inc. and others employed at  
the Target Pharmacy #1959, other pharmacies and consumers, and did not purport to

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1 merely reflect their opinions.

2 35. Defendants knowingly, recklessly or negligently made the aforementioned  
 3 false statements/concealments.

4 36. Defendants intended to induce those persons to whom it made the false  
 5 representations/concealments to rely on them, which they reasonably did to the detriment  
 6 of Plaintiffs.

7 37. As a direct and proximate result of these false statements/concealments  
 8 made to others, and their reasonable reliance upon them, Plaintiffs suffered the injuries  
 9 and damages described above.

10 38. Plaintiffs are informed and believe that Defendants knew or should have  
 11 known about the falsity of their statements and that life-threatening injuries, such as the  
 12 death of Carolyn Van Schaik, could occur if said statements were relied upon, and further  
 13 acted with fraudulent intent. Such acts and/or omissions constitute a willful, wanton,  
 14 reckless, and malicious behavior and/or a conscious disregard of the substantial risk that  
 15 such conduct might threaten the life or seriously injure the physical health, welfare, and  
 16 safety of the public and consumers like Plaintiffs.

17 39. Plaintiffs are accordingly entitled to punitive damages against Defendants.

#### 18 COUNT IV

#### 19 (RESTATEMENT (SECOND) OF TORTS, SECTION 311—NEGLIGENT 20 MISREPRESENTATION/CONCEALMENT INVOLVING 21 RISK OF PHYSICAL HARM—ALL DEFENDANTS)

22 40. Plaintiffs hereby incorporate by reference all prior allegations in this  
 Complaint as though fully set forth herein.

41. Defendants negligently and/or unreasonably failed to truthfully report, warn  
 or instruct on the dangerous nature of the medicine by virtue of failing to make  
 reasonable inquiry as to the character, suitability, safety, identify, size and labeling of the  
 medicine before misrepresenting it by concealing that it contained twice the dosage of  
 drug.

42. Defendants thus negligently and/or unreasonably failed to communicate the

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1 dangerous propensities of the medicine and misrepresented its quality and character to  
2 Plaintiffs, the public, other employees of Target Stores, Inc. and other pharmacies and  
also the FDA.

3 43. The misrepresentations/concealments directly and proximately led to the  
4 sale and use by Carolyn Van Schaik and her resulting death as well as the reliance by  
5 others on that the medicine was safe if used as directed and instructed.

6 44. Defendants intended that Plaintiffs, the public, FDA, pharmacies including  
7 Target Stores, Inc. dba Target Pharmacy #1959 and others rely upon the false  
8 representations/concealments in order to induce the sale of said medicine and its use by  
9 Carolyn Van Schaik, which intent had its intended effect as the foregoing reasonably  
10 relied upon the misrepresentations/concealments. Defendant had information in its  
possession, or available to it had it acted reasonably, in order to truthfully convey that the  
11 medicine was dangerous and could result death or serious injury.

12 45. Defendants' negligent misrepresentation/concealment directly and  
proximately led to and caused Plaintiffs' damages as described herein.

13 46. Plaintiffs are informed and believe that Defendants knew or should have  
14 known about the falsity of their statements/concealments, and further acted with malice  
or reckless disregard for the substantial likelihood that catastrophic injuries would result  
15 from their conduct, which in fact occurred with Plaintiffs. Such acts and/or omissions  
16 constitute a willful, wanton, reckless, and malicious behavior and/or a conscious  
disregard of the substantial risk that such conduct might threaten the life or seriously  
17 injure the physical health, welfare, and safety of the public and consumers like Plaintiffs.

18 47. Plaintiffs are accordingly entitled to punitive damages against Defendants.

#### COUNT V

#### **(CONSUMER FRAUD—ALL DEFENDANTS EXCEPT JULIE COLE AND TINA DO-TRINGH)**

19 48. Plaintiffs hereby incorporate by reference all prior allegations in this  
20 Complaint as though fully set forth herein.  
21  
22







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3. Loss of past earnings, loss of future income, and diminished earning capacity;
4. Damages for a substantial decrease in the quality of life and a loss of the ability to engage in the pursuit of various pleasurable activities;
5. The value of past and future gratuitous services provided by Plaintiffs' family and friends to the extent that such gratuitous services were made necessary by the Defendants' tortious conduct which led to Plaintiffs' damages;
6. Damages to Plaintiffs resulting from the loss of consortium, love, affection, care, comfort, companionship and society of their family as a result of the catastrophic injuries and deaths;
7. For other general and special damages available under law;
8. For punitive damages against Defendants to punish it and deter them from engaging in like conduct in the future;
9. For Plaintiffs' cost of suit;
10. For Plaintiffs' reasonable attorneys' fees as allowed by law; and
11. For such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of April, 2009.

SANDERS & PARKS, P.C.

By

Mark R. Gilling  
3030 North Third Street, Suite 1300  
Phoenix, Arizona 85012-3099

AND

John C. Giles  
Law Office of John C Giles, PC  
238 West Second Street  
Mesa, Arizona 85201

*Attorneys for Plaintiffs*

MICHAEL K. JEANES, CLERK  
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1 Mark R. Gilling (015078)  
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4 John C. Giles (011863)  
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FILED  
BY M. Mejia DEP.

ORIGINAL

6 *Attorneys for Plaintiffs*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MICHAEL VANSCHAIK, Individually and as  
10 Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
11 PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

12 Plaintiffs,

13 v.

14 TARGET STORES, INC., a Minnesota  
15 corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
16 corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
17 COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
18 CORPORATIONS A-Z;

19 Defendants,

Case No.:

CV2009-012125

**SUMMONS**

IF YOU WANT THE ADVICE OF A  
LAWYER, YOU MAY WISH TO CONTACT  
THE LAWYER REFERRAL SERVICE AT  
602-257-4434 OR ON-LINE AT  
[WWW.LAWYERFINDER.ORG](http://WWW.LAWYERFINDER.ORG). LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

20 **THE STATE OF ARIZONA TO THE DEFENDANT:**

21 **TARGET STORES, INC.**

SANDERS & PARKS, P.C.  
3030 N. THIRD STREET, #1300  
PHOENIX, ARIZONA 85012  
(602) 523-5600

SANDERS & PARKS, P.C.  
3030 N. THIRD STREET, #1300  
PHOENIX, ARIZONA 85012  
(602) 523-5600

**YOU ARE HEREBY SUMMONED** and required to appear and defend, within the time applicable, in this action in this Court. If served within Arizona, you shall appear and defend within **twenty (20)** days after the service of the **Summons and Complaint** upon you, exclusive of the day of service. If served out of the State of Arizona, whether by direct service, by registered or certified mail, or by publication, you shall appear and defend within **thirty (30)** days after the service of the **Summons and Complaint** upon you is complete, exclusive of the day of service. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this state, the insurer shall not be required to appear, answer or plead until expiration of **forty (40)** days after date of such service upon the Director. Service by registered or certified mail without the State of Arizona is complete **thirty (30)** days after the date of filing the Receipt and Affidavit of Service with the Court.

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**YOU ARE CAUTIONED** that, in order to appear and defend, you must file an **Answer or proper response in writing** with the Clerk of this Court, accompanied by the necessary filing fee, within the time required, and you are required to serve a copy of any Answer or response upon the Plaintiff's attorney. **RCP 10(d); ARS § 12-311; RCP 5.**

The name and address of Plaintiffs' attorneys are:

Mark R. Gilling, Esq.  
**SANDERS & PARKS, P.C.**  
3030 North Third Street  
Suite 1300  
Phoenix, Arizona 85012-3099  
(602) 532-5600

John C. Giles, Esq.  
Law Office of John C Giles, PC  
238 West Second Street  
Mesa, Arizona 85201  
(480) 964-3505

1                   **REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS**  
2 **WITH DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO**  
3 **THE CASE BY PARTIES AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF A**  
4 **SCHEDULED COURT PROCEEDING.**

5                   SIGNED AND SEALED this date: \_\_\_\_\_

APR 15 2009

6                   CLERK OF THE COURT  
7                   **MICHAEL K. JEANES, CLERK**

8                   By \_\_\_\_\_

Deputy Clerk



9  
10                   SANDERS & PARKS, P.C.  
11                   3030 N. THIRD STREET, #1300  
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*Attorneys for Plaintiffs*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MICHAEL VANSCHAIK, Individually and as  
10 Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
11 PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

12 Plaintiffs,

13 v.

14 TARGET STORES, INC., a Minnesota  
15 corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
16 corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
17 COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
18 CORPORATIONS A-Z;

19 Defendants,

Case No.: *CV2009-012125*  
**SUMMONS**

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[WWW.LAWYERFINDERS.ORG](http://WWW.LAWYERFINDERS.ORG). LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

20 **THE STATE OF ARIZONA TO THE DEFENDANT:**

21 **K-V PHARMACEUTICAL COMPANY**  
22

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PHOENIX, ARIZONA 85012  
(602) 532-5600

SANDERS & PARKS, P.C.  
 3030 N. THIRD STREET, #1300  
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 7 you is complete, exclusive of the day of service. Where process is served upon the  
 8 Arizona Director of Insurance as an insurer's attorney to receive service of legal process  
 9 against it in this state, the insurer shall not be required to appear, answer or plead until  
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 22 necessary filing fee, within the time required, and you are required to serve a copy of any  
 Answer or response upon the Plaintiff's attorney. **RCP 10(d); ARS § 12-311; RCP 5.**

The name and address of Plaintiffs' attorneys are:

Mark R. Gilling, Esq.  
**SANDERS & PARKS, P.C.**  
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5                   SIGNED AND SEALED this date: \_\_\_\_\_

6                   CLERK OF THE COURT

7                   COPY

8                   By \_\_\_\_\_ APR 15 2009

9                   Deputy Clerk



11                   MICHAEL K. SANDERS, CLERK  
12                   J. GARCIA  
13                   DEPUTY CLERK

14 SANDERS & PARKS, P.C.  
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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

MICHAEL VANSCHAIK, Individually and as  
Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

Plaintiffs,

v.

TARGET STORES, INC., a Minnesota  
corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
CORPORATIONS A-Z;

Defendants,

Case No.: CV2009-012125  
**SUMMONS**

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**THE STATE OF ARIZONA TO THE DEFENDANT:**

**ETHEX CORPORATION**

SANDERS & PARKS, P.C.  
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 PHOENIX, ARIZONA 85012  
 (602) 523-5600

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The name and address of Plaintiffs' attorneys are:

Mark R. Gilling, Esq.  
**SANDERS & PARKS, P.C.**  
 3030 North Third Street  
 Suite 1300  
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 (602) 532-5600

John C. Giles, Esq.  
 Law Office of John C Giles, PC  
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4 **SCHEDULED COURT PROCEEDING.**

5                   SIGNED AND SEALED this date: \_\_\_\_\_

6                   CLERK OF THE COURT

7                   By \_\_\_\_\_  
8                   Deputy Clerk

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GARCIA  
DEPUTY CLERK

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FILED  
BY *K Edwards*, DEP

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ORIGINAL

6 *Attorneys for Plaintiffs*

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8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MICHAEL VANSCHAIK, Individually and as  
10 Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
11 PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

Case No.: **CV2009-012125**  
**SUMMONS**

12 **Plaintiffs,**

13 **v.**

14 **TARGET STORES, INC.,** a Minnesota  
15 **corporation dba TARGET PHARMACY**  
16 **#1959; ETHEX CORPORATION,** a Missouri  
17 **corporation; K-V PHARMACEUTICAL**  
18 **COMPANY,** a Delaware corporation; **JULIE**  
**COLE,** an Arizona resident; **TINA DO-**  
**TRINGH; JOHN DOES 1-5; JANE DOES 1-5;**  
**CORPORATIONS A-Z;**

19 **Defendants,**

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COUNTY BAR ASSOCIATION

20 **THE STATE OF ARIZONA TO THE DEFENDANT:**

21 **JULIE COLE**  
22

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PHOENIX, ARIZONA 85012  
(602) 523-5600

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15 The name and address of Plaintiffs' attorneys are:

16 Mark R. Gilling, Esq.  
**SANDERS & PARKS, P.C.**  
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19 John C. Giles, Esq.  
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5                   SIGNED AND SEALED this date: \_\_\_\_\_

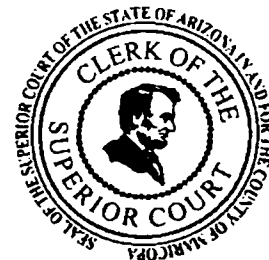
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6                   CLERK OF THE COURT  
7                   **MICHAEL K. JEANES, CLERK**

8                   By \_\_\_\_\_

Deputy Clerk

9  
10                   SANDERS & PARKS, P.C.  
11                   3030 N. THIRD STREET, #1300  
12                   PHOENIX, ARIZONA 85012  
13                   (602) 523-5600  
14  
15  
16  
17  
18  
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21  
22



MICHAEL W. JEANES, CLERK  
RECEIVED CCC #8  
DOCUMENT DEPOSITORY

09 APR 30 PM 3:08

FILED  
BY *K Edwards*, DEP

1 Mark R. Gilling (015078)  
SANDERS & PARKS, P.C.  
2 3030 N. 3<sup>rd</sup> Street, Suite 1300  
Phoenix, Arizona 85012  
3 (T) (602) 532-5600; (F) (602) 532-5700

ORIGINAL

4 John C. Giles (011863)  
Law Office of John C Giles, PC  
238 West Second Street  
5 Mesa, Arizona 85201  
(T) 480-964-3505 (F) 480-964-0059

6 *Attorneys for Plaintiffs*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 MICHAEL VANSCHAIK, Individually and as  
10 Surviving Spouse and Representative of the  
Estate of Carolyn Moira Van Schaik; PATRICK  
11 PATENGE, son of Carolyn Moira; ANDREW  
PATENGE, son of Carolyn Moira,

12 Plaintiffs,

13 v.

14 TARGET STORES, INC., a Minnesota  
15 corporation dba TARGET PHARMACY  
#1959; ETHEX CORPORATION, a Missouri  
16 corporation; K-V PHARMACEUTICAL  
COMPANY, a Delaware corporation; JULIE  
17 COLE, an Arizona resident; TINA DO-  
TRINGH; JOHN DOES 1-5; JANE DOES 1-5;  
18 CORPORATIONS A-Z;

19 Defendants,

Case No.: CV2009-012125

**SUMMONS**

IF YOU WANT THE ADVICE OF A  
LAWYER, YOU MAY WISH TO CONTACT  
THE LAWYER REFERRAL SERVICE AT  
602-257-4434 OR ON-LINE AT  
[WWW.LAWYERFINDERS.ORG](http://WWW.LAWYERFINDERS.ORG). LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

20 **THE STATE OF ARIZONA TO THE DEFENDANT:**

21 **TINA DO-TRINGH**

SANDERS & PARKS, P.C.  
3030 N. THIRD STREET, #1300  
PHOENIX, ARIZONA 85012  
(602) 523-5600



SANDERS & PARKS, P.C.  
3030 N. THIRD STREET, #1300  
PHOENIX, ARIZONA 85012  
(602) 523-5600

**YOU ARE HEREBY SUMMONED** and required to appear and defend, within the time applicable, in this action in this Court. If served within Arizona, you shall appear and defend within **twenty (20)** days after the service of the **Summons** and **Complaint** upon you, exclusive of the day of service. If served out of the State of Arizona, whether by direct service, by registered or certified mail, or by publication, you shall appear and defend within **thirty (30)** days after the service of the **Summons** and **Complaint** upon you is complete, exclusive of the day of service. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this state, the insurer shall not be required to appear, answer or plead until expiration of **forty (40)** days after date of such service upon the Director. Service by registered or certified mail without the State of Arizona is complete **thirty (30)** days after the date of filing the Receipt and Affidavit of Service with the Court.

Service by Publication is complete **thirty (30)** days after the date of first publication. Direct Service is complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete **thirty (30)** days after filing the Affidavit of Compliance and return receipt or Officer's Return. **RCP 4; ARS §§ 20-222, 28-502, 28-503.**

**YOU ARE HEREBY NOTIFIED** that, in case of your failure to appear and defend within the time applicable, judgment, by default, may be rendered against you for the relief demanded in the Complaint.

**YOU ARE CAUTIONED** that, in order to appear and defend, you must file an **Answer or proper response in writing** with the Clerk of this Court, accompanied by the necessary filing fee, within the time required, and you are required to serve a copy of any Answer or response upon the Plaintiff's attorney. **RCP 10(d); ARS § 12-311; RCP 5.**

The name and address of Plaintiffs' attorneys are:

Mark R. Gilling, Esq.  
**SANDERS & PARKS, P.C.**  
3030 North Third Street  
Suite 1300  
Phoenix, Arizona 85012-3099  
(602) 532-5600

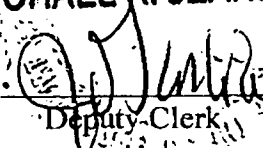
John C. Giles, Esq.  
Law Office of John C Giles, PC  
238 West Second Street  
Mesa, Arizona 85201  
(480) 964-3505

1                   **REQUESTS FOR REASONABLE ACCOMMODATIONS FOR PERSONS**  
2 **WITH DISABILITIES MUST BE MADE TO THE DIVISION ASSIGNED TO**  
3 **THE CASE BY PARTIES AT LEAST 3 JUDICIAL DAYS IN ADVANCE OF A**  
4 **SCHEDULED COURT PROCEEDING.**

APR 15 2009

5                   SIGNED AND SEALED this date: \_\_\_\_\_

6                   CLERK OF THE COURT  
7                   **MICHAEL K. JEANES, CLERK**

8                   By:  \_\_\_\_\_  
9                   Deputy Clerk



10                   SANDERS & PARKS, P.C.  
11                   3030 N. THIRD STREET, #1300  
12                   PHOENIX, ARIZONA 85012  
13                   (602) 523-5600

MICHAEL A. JEANES, CLERK  
RECEIVED CCC #7  
DOCUMENT DEPOSITORY

09 APR 27 PM 3:04

HAWKINS and E-Z MESSENGER  
1209 E. Washington Street  
Phoenix, AZ 85034  
(602) 258-8081 FAX: (602) 258-8864

CLIENT FILE NO.  
73510-001

FILED

BY M. Mejia, DEP.

IN THE ARIZONA SUPERIOR COURT  
STATE OF ARIZONA COUNTY OF MARICOPA

CASE NO. CV2009-012125

MICHAEL VANSCHAIK  
VS  
TARGET STORES, INC.

STATE OF ARIZONA )  
MARICOPA COUNTY )

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and an Officer of the Court. On 04/22/09 I received the SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION; DEMAND FOR JURY TRIAL

from SANDERS & PARKS and by MARK GILLING in each instance I personally served a copy of each document listed above upon:  
TARGET STORES, INC., A MINNESOTA CORPORATION, DBA TARGET PHARMACY #1959, BY SERVICE UPON ITS STATUTORY AGENT, C.T. CORPORATION SYSTEM on 04/23/09 at 8:35 am at 2394 E. CAMELBACK ROAD PHOENIX, AZ 85016 MARICOPA COUNTY in the manner shown below:

by leaving true copy(ies) of the above documents with MOLLY MARTINEZ, PROCESS SPECIALIST, STATED AUTHORIZED TO ACCEPT.

Description: HISP, Female, Approx. 45 yrs. of age, 4' 6" tall, Weighing 130lbs., BROWN Hair,

DON A. FORTZ, ACPS Affiant  
Sworn to before me the Apr 24, 2009

Kathy Hernandez  
Kathy Hernandez Notary

My Commission expires: 06/01/2012

SERVICE OF PROCESS \$	16.00
MILES 8 \$	16.00
SERVICE CHARGE \$	5.00
AFFIDAVIT PREP/NOTARY \$	10.00
TOTAL \$	47.00

1576171 7787 02  
ORIGINAL





**Service of Process  
Transmittal**

04/27/2009

CT Log Number 514775894



**TO:** Robert M. Shaw  
K-V Pharmaceutical Company  
2503 South Hanley  
Saint Louis, MO 63144

**RE: Process Served in Missouri**

**FOR:** K-V PHARMACEUTICAL COMPANY (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Michael Vanschaik, Individually and as Surviving Spouse and Representative of the Estate of Carolyn Moira Van Schaik; Patrick Patenge, son of Carolyn Moira; Andrew Patenge, son of Carolyn Moira, Pltfs.. vs. Target Stores, Inc., etc al., K-V Pharmaceutical Company, etc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Certificate of Compulsory Arbitration, Demand for Jury Trial

**COURT/AGENCY:** Superior Court in and for the County of Maricopa, AZ  
Case # CV2009012125

**NATURE OF ACTION:** Product Liability Litigation - Drug Litigation - Wrongful death - Medication was mislabeled

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Clayton, MO

**DATE AND HOUR OF SERVICE:** By Certified Mail on 04/27/2009 postmarked on 04/22/2009

**APPEARANCE OR ANSWER DUE:** Within 20 days after service, exclusive of date of service

**ATTORNEY(S) / SENDER(S):** Mark R. Gilling, Esq.  
Sanders & Parks, P.C.  
3030 North Third Street  
Suite 1300  
Phoenix, AZ 85012  
602-532-5600

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 792149118660  
Email Notification, Shelley Smugala ssmugala@kvph.com  
Email Notification, Robert M. Shaw rshaw@kvph.com

**SIGNED:** C T Corporation System  
**PER:** Meghan Saffell  
**ADDRESS:** 120 South Central Avenue  
Suite 400  
Clayton, MO 63105  
**TELEPHONE:** 314-863-5545

Page 1 of 1 / BL

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



**Service of Process  
Transmittal**

04/27/2009

CT Log Number 514775016



**TO:** Robert M. Shaw  
K-V Pharmaceutical Company  
2503 South Hanley  
Saint Louis, MO 63144

**RE: Process Served in Missouri**

**FOR:** ETHEX CORPORATION (Domestic State: MO)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Michael Vanschaik Individually and as Surviving Spouse and Representative of the Estate of Carolyn Moira Van schaik, et al., Pltfs. vs. Target Stores, Inc., etc., et al. including Ethex Corporation, etc., Dfts.

**DOCUMENT(S) SERVED:** Summons, Complaint, Certificate of Compulsory, Demand

**COURT/AGENCY:** Superior Court County of Maricopa, AZ  
Case # CV2009012125

**NATURE OF ACTION:** Product Liability Litigation - Drug Litigation - Wrongful Death - as a result of mislabeled medication

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Clayton, MO

**DATE AND HOUR OF SERVICE:** By Certified Mail on 04/27/2009 postmarked on 04/22/2009

**APPEARANCE OR ANSWER DUE:** Within 30 days after service, exclusive of date of service

**ATTORNEY(S) / SENDER(S):** Mark R. Gilling  
Sanders & Parks, P.C.  
3030 North Third Street  
Suite 1300  
Phoenix, AZ 85012-3099  
602-532-5600

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 792149118660  
Email Notification, Shelley Smugala ssmugala@kvph.com  
Email Notification, Robert M. Shaw rshaw@kvph.com

**SIGNED:** C T Corporation System  
**PER:** Meghan Saffell  
**ADDRESS:** 120 South Central Avenue  
Suite 400  
Clayton, MO 63105  
**TELEPHONE:** 314-863-5545

Page 1 of 1 / EK

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MICHAEL K. JEANES, CLERK  
RECEIVED CCC #8  
DOCUMENT DEPOSITORY

09 APR 30 PM 3:08

HAWKINS and E-Z MESSENGER  
1209 E. Washington Street  
Phoenix, AZ 85034  
(602) 258-8081 FAX: (602) 258-8864

FILED  
BY *K. Edwards*, DEP  
CLIENT FILE NO.  
73510-001

IN THE ARIZONA SUPERIOR COURT  
STATE OF ARIZONA COUNTY OF MARICOPA

MICHAEL VANSCHAIK  
VS  
TARGET STORES, INC.

CASE NO. CV2009-012125

STATE OF ARIZONA )  
PINAL COUNTY )

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in PINAL COUNTY and an Officer of the Court. On 04/22/09 I received the SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION; DEMAND FOR JURY TRIAL

from SANDERS & PARKS and by MARK GILLING in each instance I personally served a copy of each document listed above upon:  
JULIE COLE, AN ARIZONA RESIDENT on 04/23/09 at 8:20 pm at 5110 S. POWER ROAD MESA, AZ 85212 MARICOPA COUNTY in the manner shown below:

in person.

Description: CAUC, Female, Approx. 50 yrs. of age, 5' 6" tall, Weighing 140lbs., BLUE Eyes, GREY Hair,

*Devon M. Thomas*  
DEVON M. THOMAS Affiant  
Sworn to before me the Apr 29, 2009

*Kathy Hernandez*  
Kathy Hernandez Notary

SERVICE OF PROCESS	\$	16.00
MILES 30	\$	60.00
SERVICE CHARGE	\$	5.00
AFFIDAVIT PREP/NOTARY	\$	10.00
TOTAL	\$	91.00

My Commission expires: 06/01/2012

1576178 7787 02  
ORIGINAL



MICHAEL K. JEANES, CLERK  
RECEIVED CCC #8  
DOCUMENT DEPOSITORY

09 APR 30 PM 3:08  
FILED

BY *K. Hernandez*, DEP

HAWKINS and E-Z MESSENGER  
1209 E. Washington Street  
Phoenix, AZ 85034  
(602) 258-8081 FAX: (602) 258-8864

CLIENT FILE NO.  
73510-001

IN THE ARIZONA SUPERIOR COURT  
STATE OF ARIZONA COUNTY OF MARICOPA

MICHAEL VANSCHAIK  
VS  
TARGET STORES, INC.

CASE NO. CV2009-012125

STATE OF ARIZONA )  
PINAL COUNTY )

AFFIDAVIT OF SERVICE

THE AFFIANT, being sworn, states: That I am a private process server registered in PINAL COUNTY and an Officer of the Court. On 04/22/09 I received the SUMMONS; COMPLAINT; CERTIFICATE OF COMPULSORY ARBITRATION; DEMAND FOR JURY TRIAL

from SANDERS & PARKS and by MARK GILLING in each instance I personally served a copy of each document listed above upon:  
TINA DO-TRINGH on 04/24/09 at 3:35 pm at 5110 S. POWER ROAD MESA, AZ 85212 MARICOPA COUNTY in the manner shown below:

in person.

Description: ASIAN, Female, Approx. 35 yrs. of age, 5' 5" tall, Weighing 115lbs., BROWN Eyes, BROWN Hair,

*Devon M. Thomas*  
DEVON M. THOMAS Affiant  
Sworn to before me the Apr 29, 2009

*Kathy Hernandez*  
Kathy Hernandez Notary

SERVICE OF PROCESS	\$	16.00
MILES 30	\$	60.00
SERVICE CHARGE	\$	5.00
AFFIDAVIT PREP/NOTARY	\$	10.00
TOTAL	\$	91.00

My Commission expires: 06/01/2012

1576180 7787 02  
ORIGINAL

